

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF SOUTH DAKOTA

3 WESTERN DIVISION

4 \* \* \* \* \*

5 UNITED STATES OF AMERICA, CR 14-50064

6 PLAINTIFF, SEPTEMBER 23, 2016

7 VS. RAPID CITY, SOUTH DAKOTA

8 TIMOTHY J. FIELDING,

9 DEFENDANT.

10 \* \* \* \* \*

11 TRANSCRIPT OF PLEA AND SENTENCING

12 BEFORE THE HONORABLE JEFFREY L. VIKEN,

13 CHIEF UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF: SARAH B. COLLINS, ESQ.

16 Assistant United States Attorney

17 District of South Dakota

18 #201 Andrew W. Bogue Federal Building

19 515 Ninth Street

20 Rapid City, SD 57701

21 FOR THE DEFENDANT: STEPHEN DEMIK, ESQ.

22 Assistant Federal Public Defender

23 District of South Dakota

24 703 Main Street, Second Floor

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COURT REPORTER: JUDITH M. THOMPSON, R.P.R.

Official Court Reporter

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1 THE COURT: This is the time set for a hearing in  
2 the case of United States versus Timothy Fielding, our file  
3 14-50064.

4 May I have the appearance of government counsel,  
5 please?

6 MS. COLLINS: Sarah Collins on behalf of the  
7 United States.

8 THE COURT: Afternoon, Ms. Collins.

9 MS. COLLINS: Afternoon.

10 THE COURT: Defense.

11 MR. DEMIK: Stephen Demik, Assistant Federal  
12 Public Defender on behalf of Mr. Fielding, who is present  
13 before the Court, Your Honor.

14 THE COURT: Afternoon Mr. Demik.

15 MR. DEMIK: Good afternoon.

16 THE COURT: Afternoon, Mr. Fielding.

17 THE DEFENDANT: Afternoon.

18 THE COURT: You know, Shirley L'Esperance  
19 prepared your presentence report. She's unavailable to us,  
20 so we have Mr. Ryan Akers from U.S. Probation. He is very  
21 familiar with your case; and Jacob King from United States  
22 Probation as well.

23 So what I have in front of me in this case, which  
24 is an unusual set of circumstances, is a waiver of  
25 indictment, the filing of a superseding information

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1 charging false statement in violation of federal law, a  
2 plea agreement, a factual basis statement, and a  
3 presentence investigation report which was prepared before  
4 the plea.

5 Mr. Fielding, have you had enough time to work  
6 with Mr. Demik to prepare for this hearing today?

7 THE DEFENDANT: I think we are good.

8 THE COURT: All right. Well, if you have  
9 questions during this hearing either of me or of Mr. Demik,  
10 if you want to talk to your lawyer, would you let me know  
11 that, please?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: We will take a break and you can have  
14 at much time as you want to work with Mr. Demik.

15 Let's start this hearing by having you placed  
16 under oath, sir.

17 TIMOTHY FIELDING, DEFENDANT HEREIN, SWORN

18 THE COURT: Mr. Fielding, do you understand you  
19 are now under oath and if you lie to me during this hearing  
20 the government can charge you with false statement or  
21 perjury? Do you understand that, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: So I have to go through a whole  
24 series of questions with you to make certain that you are  
25 able to understand your rights; and if you are going to

1 enter a plea of guilty to this superseding information  
2 charging false statement, that you do so knowingly,  
3 voluntarily, with full understanding of your rights, and  
4 full understanding of the consequences if you choose to  
5 plead guilty to this crime.

6 You are 52 years old now, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: What's your educational background?

9 THE DEFENDANT: High school graduate.

10 THE COURT: And you have a work history in the  
11 trucking industry, is that correct?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In terms of your mental status and  
14 understanding your rights making a decision in your case  
15 today, are you suffering any sort of mental or physical  
16 conditions of any kind?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you have any emotional problems  
19 that are interfering with your ability to understand your  
20 rights?

21 THE DEFENDANT: No, sir

22 THE COURT: Are you taking any prescription  
23 medications at this time?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had any intoxicants in the

1 last 72 hours?

2 THE DEFENDANT: No, sir.

3 THE COURT: Any reason at all that you would not  
4 be able to understand your rights and make a decision in  
5 this case today?

6 THE DEFENDANT: No, sir.

7 THE COURT: And have you been fully satisfied  
8 with the legal advice and representation which Mr. Demik  
9 has given to you?

10 THE DEFENDANT: Yes.

11 THE COURT: Well, I have to remind you of the  
12 rights you have in this case. The original indictment in  
13 the case charges you with a much more serious offense. The  
14 indictment in the case, sealed docket 48, charges you with  
15 two counts and a forfeiture allegation. Count 1 is  
16 attempted commercial sex trafficking; Count 2 is attempted  
17 enticement of a minor using the internet. Those are  
18 serious crimes of major consequences. The superseding  
19 information, which we are going to talk about, is a lesser  
20 offense; it has a different punishment.

21 So let's make sure you understand that do you not  
22 have to accept the plea agreement and the deal that's been  
23 made between yourself, Mr. Demik, or Mr. Colbath, and the  
24 U.S. Attorney's office. Do you understand you do not have  
25 to accept any plea bargain?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. So here is what would  
3 happen, Mr. Fielding. You have absolutely every right to  
4 go to a jury trial, but it would be on the original  
5 indictment in the case, the two counts which I have just  
6 described to you, plus the forfeiture allegation is  
7 something I would handle after trial.

8 Now, you would be presumed innocent of any  
9 wrongdoing, as you are right now. As you sit here, there's  
10 no evidence you have done anything wrong; no evidence of  
11 any kind. So the purpose of a trial on the indictment  
12 would be to determine whether the United States through  
13 witnesses and exhibits and evidence at a trial could  
14 convince a jury of 12 people beyond a reasonable doubt that  
15 you are guilty of one or more of the offenses charged in  
16 that indictment. Do you understand that's what a trial  
17 would be about?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So we have trials in this courtroom  
20 all the time. We have tried trials on these charges that  
21 appear in the indictment. So we have seen juries here;  
22 they'd be selected from the western division, which is  
23 roughly the western third of South Dakota. You would be  
24 present for all stages of your trial. You would be  
25 represented by Mr. Demik, who is an experienced trial

1 lawyer. You would have effective representation of counsel  
2 at every stage of that trial. You would be present for  
3 jury selection where Ms. Collins and Mr. Demik and I would  
4 ask the jurors questions to determine whether they were fit  
5 jurors to hear your case, whether they accepted that you  
6 are presumed innocent of any wrongdoing; whether they would  
7 hold the United States to its burden of proof beyond a  
8 reasonable doubt of each element of any charge brought  
9 against you. And through that process we would select a  
10 jury of 12 people and one alternate. They would be the  
11 judges of the facts in that case. And their sworn duty  
12 would be to consider the prosecution's evidence and  
13 testimony and arguments and determine whether they believe  
14 the United States could prove each element of an offense  
15 beyond a reasonable doubt.

16 You don't have to do anything at trial. You are  
17 presumed innocent. I make clear to the jurors if you  
18 choose not to testify, they cannot consider that in any way  
19 in arriving at their verdict. You don't have to call any  
20 witnesses, you don't have to put on any evidence; the  
21 burden never shifts to you to prove your innocence, but at  
22 trial the burden is always on the United States to prove  
23 guilt.

24 So through the trial process, the prosecution  
25 will put on witnesses and evidence. Mr. Demik could

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1 cross-examine those people to help the jurors understand  
2 whether they should believe or give weight to that  
3 testimony and evidence. And you need do nothing.

4 Now, if you wanted to defend, you wanted to get  
5 on the stand, take the oath and testify truthfully about  
6 any matter connected with these charges, you could do that.  
7 You can take this stand and you could testify to the jury  
8 in response to Mr. Demik's questions and testify under oath  
9 about any matter connected with these charges. You would  
10 be cross-examined by the prosecutor, of course, but you  
11 would have an absolute right at trial to testify or not and  
12 that choice is yours alone.

13 Now, you could call witnesses. We'd issue  
14 subpoenas and require people to come to court if they had  
15 information or knew something about the circumstances that  
16 gave rise to these charges, or anything else connected with  
17 this trial would be admissible in evidence. And again, Mr.  
18 Demik could call those witnesses to the stand to give  
19 testimony and they'd be cross-examined by the prosecution.  
20 You wouldn't testify or call witnesses to prove that you  
21 are innocent; that's not your burden; the jury will  
22 understand that. If you chose to defend it, it would be  
23 for the purpose of assisting the jury in understanding  
24 whether or not they should believe the prosecution's  
25 witnesses, what weight to give to that testimony, and



1 ultimately to decide whether or not the United States could  
2 prove an offense against you beyond a reasonable doubt.  
3 Those 12 jurors have to reach a unanimous verdict.

4 If the government failed to prove any essential  
5 elements of one the offenses charged, you cannot be found  
6 guilty of that charge; you would be found not guilty of  
7 that charge. And a not-guilty verdict in this courtroom  
8 are common; they are not infrequent. Tough cases get tried  
9 by the U.S. Attorney's office; jurors do what they can to  
10 sort out the evidence. And believe you me, after 39 years  
11 of working in this courtroom, they take these things  
12 seriously and they consider each case on its own merits.  
13 They are not influenced by sympathy or prejudice; they work  
14 very hard to follow law and be judges of the facts.

15 So unless and until the jury concluded that you  
16 were guilty beyond a reasonable doubt of one or more of the  
17 charges, you are presumed innocent. So you have that whole  
18 range of rights at trial.

19 Do you have a question about any of those rights?

20 THE DEFENDANT: No, sir.

21 THE COURT: You understand that if you go forward  
22 with this plea agreement and plead guilty to this false  
23 statement charge, that you will be giving up your right to  
24 a jury trial?

25 THE DEFENDANT: Yes, sir.

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1           THE COURT: If I accept your guilty plea,  
2           Mr. Fielding, you are convicting yourself of false  
3           statement and there will be no jury trial. Are you clear  
4           about that?

5           THE DEFENDANT: Yes.

6           THE COURT: You will always have the right to the  
7           effective assistance of counsel, whether you want to go to  
8           trial or whether you intend to plead guilty and go to  
9           sentencing. But other than that right to counsel, these  
10          other rights connected with trial are lost if you plead  
11          guilty to this crime. Do you understand that?

12          THE DEFENDANT: Yes.

13          THE COURT: Any question at all about those  
14          realities?

15          THE DEFENDANT: No, sir.

16          THE COURT: All right. Well, let's take a look  
17          at the plea agreement in this case, Mr. Fielding. It's  
18          entered as docket entry 64 filed on July 25, 2016. Do you  
19          have the plea agreement in front of you?

20                 I need to go over parts of this plea agreement  
21          with you to make sure you understand. But let me ask  
22          first: have you carefully reviewed this plea agreement  
23          with your lawyer?

24          THE DEFENDANT: Yes.

25          THE COURT: Do you fully understand every

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1 provision of the plea agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: Again, if you have questions, please  
4 ask. Let's take a look at paragraph B of the plea  
5 agreement; it's on page 2. Paragraph B is entitled, "Plea  
6 Agreement Procedure Specific Sentence of Two to Eight Years  
7 Imprisonment Binding on the Court." It is an extremely  
8 rare thing that I accept binding plea agreements. My view  
9 is that sentences to be imposed in criminal cases is a  
10 judicial function. There are rare circumstances which the  
11 parties present to me, and you presented to me here, rare  
12 circumstances under which there are reasons, for example,  
13 to avoid what was, I think, a potential 15-year mandatory  
14 minimum on sex trafficking given the age of the potential  
15 child involved. Is that right, Ms. Collins?

16 MS. COLLINS: It was charged as a ten-year, Your  
17 Honor.

18 THE COURT: A ten-year mandatory minimum  
19 sentence. So whether or not to go to trial on that charge  
20 and the other charge in the indictment is entirely up to  
21 you. Entirely up to you. But when the circumstances are  
22 presented to me in this way, and the facts are as they  
23 appear to be in the filed documents, it would be my  
24 approach to accept this type of arrangement because if you  
25 and your attorney believe this is a just outcome and the

1 prosecution believes it's a just outcome, the avoidance of  
2 a mandatory minimum ten-year sentence about which I could  
3 do nothing to sentence you below that, that's the kind of  
4 circumstance under which I have accepted a binding plea  
5 agreement. So paragraph B says that under this plea  
6 agreement the parties are going to recommend a sentence of  
7 not less than two years up to eight years' imprisonment as  
8 an appropriate disposition of this case.

9 Do you understand what the plea agreement says?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that that agreement  
12 is binding on the Court?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Is it your view that that  
15 is a fair and just sentence in this case if you plead  
16 guilty to false statement?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Well, let's take a look at paragraph  
19 C. This states your intention to plead guilty to the  
20 offense of false statement. Is that your plan?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: If you do that, the charge carries a  
23 maximum term of imprisonment up to eight years, as set by  
24 Congress as the maximum. So it would be any term of years  
25 up to eight, but not under this plea agreement. It would

1 be not less than two, with a maximum possible eight years  
2 in prison. Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In addition to imprisonment there  
5 could be a fine of up to 2000 -- I'm sorry -- \$250,000 or  
6 both a fine and imprisonment. Do you understand that, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, we don't have parole in the  
9 federal system, we have what's called supervised release  
10 which here is up to three years on supervision after  
11 release from custody. That's designed for people who have  
12 rehabilitative needs. We can talk about whether you have  
13 any such needs justifying supervision after custody. But  
14 you can receive up to three years of supervision after  
15 custody. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you violate supervised release in  
18 this case and a petition or motion is filed on which we'd  
19 we have a hearing, if I found you had violated supervised  
20 release in a serious way, I could sentence you up to  
21 two years in prison just for violating supervised release.  
22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: As with every federal felony, there  
25 is, at the time of sentencing, a required payment of \$100

1 into a Victim's Assistance Fund. It's a national program.  
2 You understand that would have to be paid?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Then in paragraph C it also goes on  
5 to say that if you are sentenced under the terms of this  
6 plea agreement, after sentencing the United States would  
7 move to dismiss the indictment against you which is  
8 currently pending. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you have any question about the  
11 maximum possible penalty in the case?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any question about the  
14 restriction that I am under that I cannot sentence to you  
15 less than two years?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Let's take a look, then, in the plea  
18 agreement at paragraph F. Again, this has to do with the  
19 prosecution and defense's recommendation regarding  
20 sentence. It says that if I accept your guilty plea and we  
21 have a sentencing hearing, the United States and you and  
22 Mr. Demik are free to recommend whatever sentence you feel  
23 is appropriate as long as it's within the not less than two  
24 no more than eight-year range. Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Now, within that range of two years  
2 to eight years, I am free under the terms of this agreement  
3 to sentence you to any period of custody of not less than  
4 two up to eight. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you or Mr. Demik make a  
7 recommendation of two years, or whatever period of time it  
8 is, but not less than two years, and I do not follow your  
9 recommendation, you realize you cannot withdraw your guilty  
10 plea?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: That is, if you are unhappy with my  
13 sentence, even though it's within the agreed upon, not less  
14 than two no more than eight years, if you are unhappy with  
15 it you cannot take back your plea. Are you clear about  
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Let's take a look, then, at paragraph  
19 K, which is on page 6. It's an agreement to forfeit  
20 property. You had some amount of money; I think it was,  
21 like, \$186, less than \$200 on your person at the time of  
22 your arrest in this case. You are agreeing under paragraph  
23 K that that was your money and you are agreeing to forfeit  
24 it in connection with this case.

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Is that your agreement?

2 THE DEFENDANT: Yes.

3 THE COURT: On page 8, paragraph P is entitled,  
4 "Waiver of Offenses and Appeal Rights." Now, if you choose  
5 not to enter this plea agreement and go to trial in the  
6 indictment, in the event you were convicted, you would have  
7 a full range of appeal rights. Errors that were made  
8 before trial, at trial, constitutional errors, and other  
9 legal claims; you would have a full right to challenge any  
10 matter connected with your trial or sentencing in this case  
11 without limitation.

12 Under the terms of this plea agreement, which is  
13 standard language, you are giving up all rights to appeal  
14 any sentence I give you within the terms of this agreement  
15 except if you can show this Court has no authority over the  
16 case, no jurisdiction, you can always appeal that. If in  
17 application of the Federal Sentencing Guidelines in the  
18 case I find a basis in the guidelines system to depart  
19 upward to cover an aggravating factor or some other reason,  
20 you could challenge my decision to depart upward. But  
21 here, given the guideline range, there may very well be an  
22 upward departure or upward variance above the guideline  
23 range, because it's actually at or below the two-year  
24 sentence below which I cannot impose custody. You really  
25 are not going to be able to challenge an upward departure,

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1 upward variance above the guideline range in this case as I  
2 see it.

3 Ms. Collins, is that the way you see it?

4 MS. COLLINS: I would agree.

5 THE COURT: The guidelines in the case are 18 to  
6 24 months, if I remember that correctly. We will get to  
7 the guidelines. We have to put them on the record. 18 to  
8 24 months would be the guideline range when we get to that  
9 point. 24 months is the high end of the guidelines, but  
10 it's the least I can sentence you to under the binding plea  
11 agreement.

12 So, again, there's a limitation on your ability  
13 to appeal this sentence. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What do you think, Mr. Demik? Is  
16 that accurate, he would have no right under this binding  
17 plea agreement to challenge the sentence above 24 months  
18 up to eight years. Is that the way you read it?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Demik?

21 MR. DEMIK: May I have one second, Your Honor?

22 THE COURT: Yes.

23 MR. DEMIK: I agree, Your Honor. That provision  
24 is in paragraph P of the plea agreement.

25 THE COURT: Right. The top end of the guideline

1 range is the lowest period of time which I can sentence and  
2 that is 24 months. Sentencing him above 24 months could  
3 not result in an appeal of an upward departure or variance  
4 to a longer sentence as long as it didn't exceed the  
5 statutory maximum of eight years.

6 MR. DEMIK: Well, Your Honor, I don't want to be  
7 a stickler, but the way I read paragraph P is there's an  
8 appellate waiver except if the Court departs upward from  
9 the guidelines. However, I believe that Ms. Collins and  
10 Mr. Colbath had a discussion regarding that. I am not  
11 going to take an issue with it, but I think in terms of the  
12 plea agreement, except from the appellate waiver or  
13 anything above the guidelines, but I defer to Ms. Collins'  
14 conversation with Mr. Colbath on that; it sounds like  
15 Mr. Fielding is clear on that.

16 THE COURT: Right. Do you understand that, Mr.  
17 Fielding?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. So here is my finding for  
20 the record in the event there is an appeal on that topic.  
21 My interpretation of this plea agreement and the way in  
22 which I am going to apply it is that notwithstanding the  
23 facts, the Federal Sentencing Guideline range appears to be  
24 18 months to 24 months. If I choose to sentence  
25 Mr. Fielding above 24 months or two years, that is the top

1 of the guidelines, but it's the least I can sentence him to  
2 under a binding plea agreement. Therefore, if I sentence  
3 him to a period of imprisonment longer than two years up to  
4 the statutory maximum of eight years, you cannot appeal an  
5 upward departure or variance that would result in that  
6 longer sentence. That is my interpretation for the record.

7 Do you have any questions about the terms of this  
8 plea agreement, Mr. Fielding?

9 THE DEFENDANT: No.

10 THE COURT: Is this your signature on page 9 of  
11 the plea agreement?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you sign the agreement on  
14 March 31, 2016, because you understood it?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, other than the promises that are  
17 made in the plea agreement between you, your attorney, and  
18 the U.S. Attorney's office, other than their promises to  
19 dismiss the indictment after sentencing and make the  
20 recommendation of somewhere between two and eight years'  
21 custody, were any other promises made to you by anyone to  
22 get you to accept this plea agreement?

23 THE DEFENDANT: No.

24 THE COURT: Did anyone in law enforcement or  
25 anywhere else threaten you in any way to get you to accept

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1 this plea agreement?

2 THE DEFENDANT: No.

3 THE COURT: Are you under any pressure, other  
4 than the pressure of needing to make a decision, has anyone  
5 pressured you to get you to accept this agreement?

6 THE DEFENDANT: No.

7 THE COURT: Are you accepting it of your own free  
8 will?

9 THE DEFENDANT: Yes.

10 THE COURT: Is that a voluntary act on your part?

11 THE DEFENDANT: Yes.

12 THE COURT: Let's take a look at the factual  
13 basis statement, docket 65. Do you have that statement in  
14 front of you, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: It's a two-page document. Have you  
17 carefully reviewed this factual basis statement with your  
18 attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: Is every fact in the statement true  
21 and correct?

22 THE DEFENDANT: Yes.

23 THE COURT: Is there any detail which is not  
24 accurate?

25 THE DEFENDANT: No.

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1 THE COURT: Is this your signature on March 31,  
2 2016, on page 2 of the factual basis statement?

3 THE DEFENDANT: Yes.

4 THE COURT: Again, did anyone threaten you to  
5 accept these facts?

6 THE DEFENDANT: No.

7 THE COURT: Any promises beyond the scope of the  
8 plea agreement or any pressure by anyone to get to you  
9 admit these things?

10 THE DEFENDANT: No.

11 THE COURT: Are these facts true?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you voluntarily accepting these  
14 facts as true in your case?

15 THE DEFENDANT: Yes.

16 THE COURT: There are other consequences of  
17 having a felony conviction, Mr. Fielding. You have no  
18 criminal history of any kind. So this is a felony  
19 conviction. It means in terms of your civil liberties you  
20 can never own or possess a firearm, unless that right is  
21 restored. You can't vote in most jurisdictions. You can't  
22 serve on jury. And there could be other civil consequences  
23 of having a felony conviction.

24 Have you discussed those things with your  
25 attorney?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you feel you fully understand the  
3 consequences of having a felony conviction?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you fully understand the maximum  
6 possible penalties and the consequences of pleading guilty  
7 to this false statement charge?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Collins, would you read the  
10 superseding information?

11 MS. COLLINS: Yes, Your Honor. In the matter  
12 entitled United States of America, Plaintiff, versus  
13 Timothy J. Fielding, Defendant. The superseding  
14 information for false statement reads as follows.

15 "The Assistant United States Attorney charges and  
16 informs the Court on or about between August 1, 2014, and  
17 August 7, 2014, in the District of South Dakota, and  
18 elsewhere, the Defendant, Timothy J. Fielding, did  
19 knowingly and willfully make a materially false,  
20 fictitious, and fraudulent statement and representation in  
21 a matter within the jurisdiction of the executive branch of  
22 the government of the United States, and engaged in false  
23 negotiations with agents during an undercover operation.  
24 The statement and representations were false because the  
25 defendant, Timothy J. Fielding, then and there knew he did

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1 not intend to engage in the acts for which he negotiated."  
2 All in violation of 18 United States Code Section 1001.  
3 Thank you.

4 THE COURT: Thank you, Ms. Collins.

5 Mr. Fielding, do you fully understand the charge  
6 which Ms. Collins just read?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any question about what  
9 you would be admitting if you plead guilty to that offense?

10 THE DEFENDANT: No, sir.

11 THE COURT: Do you have any questions of me or of  
12 Mr. Demik before I ask you how you wish to plead to this  
13 offense?

14 THE DEFENDANT: No, sir.

15 THE COURT: If would you please stand, then,  
16 Mr. Fielding.

17 To the offense of false statement as set out in  
18 the superseding information, sir, what is your plea, not  
19 guilty or guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: All right, Mr. Fielding. Let me ask  
22 you: are you pleading guilty to this crime because you are  
23 in fact guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is it your own voluntary wish to

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1 enter a plea of guilty to this charge?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you feel you are fully competent  
4 and able to understand the nature of this offense and the  
5 consequences of pleading guilty to it?

6 THE DEFENDANT: Yes.

7 THE COURT: You may be seated, sir.

8 Mr. Demik, in your professional opinion do you  
9 think if Mr. Fielding proceeded to trial on the offenses  
10 charged in the superseding information of false statement  
11 that the United States could produce proof beyond a  
12 reasonable doubt each element of that charge?

13 MR. DEMIK: Yes.

14 THE COURT: Do you have any questions of me,  
15 Mr. Fielding, or of your lawyer before I accept your guilty  
16 plea?

17 THE DEFENDANT: No.

18 THE COURT: It is my finding in your case, sir,  
19 United States versus Timothy Fielding, file 14-50064, that  
20 you are fully competent and capable of entering an informed  
21 plea. You understand the nature of the false statement  
22 charge, and understand the consequences of pleading guilty  
23 to it. I do find that our plea is knowing and voluntary,  
24 it is supported by an independent basis in fact, which is  
25 set out in your sworn factual basis statement. So I am

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1 going to accept your guilty plea, Mr. Fielding, and adjudge  
2 you guilty of the offense of false statement as charged in  
3 the superseding information.

4 Are you in a position where you wish to go to  
5 sentencing on this charge today, Mr. Fielding?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Demik.

8 MR. DEMIK: Yes, sir.

9 THE COURT: Ms. Collins.

10 MS. COLLINS: Yes, Your Honor.

11 THE COURT: I did study carefully the plea  
12 presentence investigation report. It's unusual to prepare  
13 a presentence report in advance of a change of plea.  
14 However, it permits me by having this information to decide  
15 whether or not to accept the binding plea agreement.  
16 Counsel, take all the time you need to confer.

17 MR. DEMIK: Sorry, Your Honor.

18 THE COURT: That is fine.

19 MR. DEMIK: I needed to clarify something.

20 THE COURT: Take your time; make sure you have  
21 your discussion.

22 I have reviewed this presentence investigation  
23 report carefully and I am accepting the binding plea  
24 agreement. You have entered that agreement, you pled  
25 guilty under it, and I accept it for purposes of

1 sentencing.

2 Now, in addition to the presentence investigation  
3 report in the event you are going to get to a sentencing in  
4 the case, I did study other documents. I did see that as  
5 of today's date there was a waiver of appearance on the  
6 superseding information and entry of plea of not guilty.  
7 That is, you have a document here which permits you to --  
8 not to -- to plead guilty to the superseding information at  
9 your first hearing. Did you carefully review this waiver  
10 with Mr. Demik?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I have it in front of me. Did you  
13 sign this document agreeing to waive what was standard  
14 practice at the initial appearance and entry of a not  
15 guilty plea, then a later change of plea proceeding. Are  
16 you waiving those processes?

17 THE DEFENDANT: Yes.

18 THE COURT: You are waiving indictment on the  
19 false statement charge, is that correct?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Well, I will accept that  
22 waiver and we will file that document in the file in the  
23 case.

24 Now, in addition to the presentence report, I saw  
25 the addendum to the report. There are no defense

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1 objections, Mr. Demik?

2 MR. DEMIK: None, Your Honor.

3 THE COURT: No United States objections to the  
4 presentence report, Ms. Collins?

5 MS. COLLINS: That's correct.

6 MR. DEMIK: Your Honor, I'm sorry. It occurred  
7 to me based on the discussion we had during the change of  
8 plea hearing that paragraph 48 of the presentence report  
9 might need to be amended.

10 THE COURT: Let's take a look at 48.

11 MR. DEMIK: The last sentence, Your Honor.

12 THE COURT: Yes. It's the paragraph in the plea  
13 agreement entitled, "Impact of plea agreement." The last  
14 sentence says, "The plea agreement reduced the defendant's  
15 maximum statutory custody exposure from a mandatory minimum  
16 of 15 years to life down to eight years." And what I have  
17 heard here is that under the indictment filed in the case  
18 the mandatory minimum which would apply would be ten years  
19 to life. Is that right, Ms. Collins?

20 MS. COLLINS: That's correct, Your Honor. We  
21 have indicted for a child between 14 and 16.

22 THE COURT: Yes. Is that your understanding as  
23 well, Mr. Demik?

24 MR. DEMIK: Yes, Your Honor.

25 THE COURT: Is that agreeable to you if we change

1       that in your presentence report, Mr. Fielding?

2               THE DEFENDANT:   Yes.

3               THE COURT:   I think it more accurately reflects  
4       the reality of the indictment in the case and also makes it  
5       clear you were not up against a 15-year mandatory minimum,  
6       which is a more serious crime.  So what we will do in the  
7       statement of reasons, Mr. Akers, and you can tell Ms.  
8       L'Esperance, we will make a correction in paragraph 48.  
9       That will clarify it, for example, if you were in prison  
10      it's a statement of reasons.

11              Is that acceptable, Mr. Demik?

12              MR. DEMIK:   Yes, Your Honor.  Thank you.

13              THE COURT:   Mr. Fielding?

14              THE DEFENDANT:   Yes.

15              THE COURT:   Ms. Collins?

16              MS. COLLINS:   Yes.

17              THE COURT:   Let's go on, then.  Were there any  
18      other comments or objections in terms of a change or  
19      amendment to the presentence report, Ms. Collins?

20              MS. COLLINS:   No.

21              THE COURT:   There are defense objections to the  
22      report.  I appreciate receiving them, Mr. Demik.  We will  
23      take each one of those in turn before I go farther in the  
24      sentencing.

25              So let's turn to the defense objections and the

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1 addendum. I'm sorry. There were no objections. You  
2 worked the concerns out in paragraphs 26, 30, 32, is that  
3 right, Mr. Demik?

4 MR. DEMIK: Yes, Your Honor, that's my  
5 understanding. I didn't see that Mr. Colbath had filed any  
6 formal objections.

7 THE COURT: No, they were resolved. I appreciate  
8 that.

9 Did you have any legal or factual objections to  
10 the presentence report, Mr. Demik?

11 MR. DEMIK: None, Your Honor.

12 THE COURT: Well, notwithstanding the fact that  
13 there are no objections, I still have to go through the  
14 Federal Sentencing Guidelines, which I will do in a moment,  
15 Mr. Fielding.

16 In addition to studying the presentence report, I  
17 very much appreciated your letter. It was lengthy, it was  
18 well thought out; it certainly expresses a great many, I  
19 think, heart-felt sentiments about the tragedy that's  
20 following you for engaging in false statement under these  
21 circumstances. You will have every right to speak about  
22 this when we get to sentencing. But I certainly respect  
23 receiving your letter.

24 As is often the case with people who have a solid  
25 family background, you have letters that were submitted by

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1 Catherine Fielding, Krysta Simons; and Karey Davis, your  
2 daughter; Carol Silvis sent a letter. All them expressing  
3 enormous affection for you, the role that you played in the  
4 family, the supportive role that you had in their lives,  
5 and the importance that you have and support you have which  
6 is very positive going forward.

7 There was a sexual offender evaluation by mental  
8 health professionals, Delmonico & Griffin, which I read  
9 with interest. That was conducted; the outcome being that  
10 mental health professionals concluded you are not a  
11 pedophile, there's a low risk of any future crimes, sex  
12 crimes involving children, so that eliminates that whole  
13 question about mental health unless it's challenged.

14 And then your attorney put in a sentencing  
15 memorandum asking for the low end of plea agreement, that  
16 is, two years' custody with self-surrender to the Bureau of  
17 Prisons, which has a positive effect on classification.

18 Were there any materials in addition to those  
19 things submitted for my review?

20 MR. DEMIK: No, Your Honor.

21 THE COURT: Ms. Collins?

22 MS. COLLINS: No, Your Honor.

23 THE COURT: Well, the Federal Sentencing  
24 Guidelines were put in place, Mr. Fielding, in part on the  
25 theory that someone charged with false statement in any

1 federal court in the United States, if they got a  
2 sentencing on that charge, could expect to receive a range  
3 of months of imprisonment called for by the guidelines, so  
4 it's a calculation. It has theoretical or actual bases in  
5 empirical data for each offense type. A base offense level  
6 is assigned to every federal crime. Here the base offense  
7 level is 14 for false statement. Four levels are added  
8 because it's a 18 USC Section 1001 conviction, but the  
9 false statement related to sex offenses in violation of  
10 federal law, so four levels are added to the base, giving  
11 you an adjusted offense level of 18.

12 There's a two-level reduction in your favor. You  
13 completely accepted responsibility for this offense. That  
14 takes you down two levels. The United States requested a  
15 third-level reduction for resolving the case without trial.  
16 So you will see at paragraph 20 your total offense level is  
17 15.

18 The guidelines have a method for counting  
19 criminal history. Applied in your case you have zero  
20 criminal history, which puts you in the most favorable  
21 category on the sentencing table of Criminal History  
22 Category I.

23 We get the guideline calculation in paragraph 47  
24 on page 11 of the presentence report. Based on a total  
25 offense level of 15 and a Criminal History Category I, the

1 guideline range for imprisonment in this case is 18 months  
2 to 24 months in federal custody; that's a year and a half  
3 to two years in federal custody. That's the guideline  
4 range. The maximum set by Congress is up to eight years  
5 for this crime. I have accepted the binding plea  
6 agreement, and so notwithstanding the guideline range, I  
7 will sentence you to not less than 24 months, two years,  
8 and not more, of course, than eight years, which is the  
9 maximum set by Congress.

10 Supervised release for false statement under  
11 these circumstances is not more than three years of  
12 supervision after release from custody. The guidelines  
13 would call for one year to three years of supervision after  
14 your release from custody.

15 Almost every federal felony would be probation  
16 eligible for false statement and many other offenses, but  
17 not when it's a binding plea agreement with a sentence of  
18 not less than two years' custody.

19 You are not eligible for probation under the  
20 guidelines system.

21 The maximum fine is \$250,000. The guideline  
22 range for a fine is 4,000 to \$40,000. I am not aware of  
23 any reason a fine would be useful in case like this one.

24 There's no restitution requested, Ms. Collins?

25 MS. COLLINS: Correct.

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1 THE COURT: There is a required payment of \$100  
2 into the Victim's Assistance Fund, Mr. Fielding. It's  
3 mandatory at the time of sentencing in all federal cases.

4 The Federal Sentencing Guidelines are not binding  
5 on me. I have to consider them, but I am not bound to  
6 follow them.

7 Is that an accurate statement of the statutory  
8 and guideline factors for sentencing?

9 MS. COLLINS: It is.

10 THE COURT: Do you agree, Mr. Demik?

11 MR. DEMIK: I agree, Your Honor.

12 THE COURT: With the exception of paragraph 48  
13 and the change which we will make as indicated, I am going  
14 to adopt the presentence investigation report without  
15 change.

16 So now, Mr. Demik, Mr. Fielding, and anyone who  
17 wishes to speak about sentencing, I would be pleased to  
18 hear from you. Mr. Demik.

19 MR. DEMIK: Yes, Your Honor. You read my  
20 sentencing memorandum. I think what's clear is  
21 Mr. Fielding doesn't present any serious risk or danger to  
22 the community and that's evidenced by the letters that you  
23 received and the report that you made reference to. In  
24 that report it contains a lot of useful information for the  
25 Court in protecting the public under that 3553(a) factor.

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1           Your Honor, I would argue I don't think this is  
2           any more than a two-year case. I am familiar with these  
3           cases and Mr. Colbath reached this plea agreement with the  
4           government, I think for good reason, having looked through  
5           the discovery and reviewed it prior to today's hearing.

6           As far as I am aware of sentencing disparities, I  
7           am aware that there are individuals who received three-year  
8           sentences, but they also pled to different charges. False  
9           statement, which Mr. Fielding has admitted, the government  
10          put in the factual basis in the plea agreement that he  
11          mislead law enforcement officers. He mislead them by their  
12          belief that he was going to follow through with this sex  
13          act that they were conducting their sting operation on. So  
14          I think a two-year sentence is -- certainly it shouldn't be  
15          more than that and that would be my recommendation to the  
16          Court.

17                 I put everything before the Court that I have.

18                 I know that his family has come out here from  
19          Pennsylvania, he drove out from Pennsylvania. As the Court  
20          is aware, I am making a request for a self-surrender date.  
21          I think that is unusual and extraordinary, but I think that  
22          these circumstances it would save both the government and  
23          Mr. Fielding resources.

24                 And also, Your Honor, the important benefit to  
25          him, of course, is that when BOP does their classification

1       that's significantly affected by whether an individual is  
2       allowed to self-surrender or not and if he is allowed to  
3       self-surrender, he's designated in approximately four to  
4       five weeks, he can report to the facility where he is  
5       designated.

6               He has been on pretrial release for quite some  
7       time, Your Honor. There's been no issues. He has been  
8       completely compliant. He came all the way out here with  
9       his family for the sentencing, fully aware that the plea  
10      agreement he signed called for a sentence of imprisonment,  
11      so I don't think he presents a risk of flight. And  
12      understanding that it's an extraordinary request, I just  
13      wanted to put it before the Court. I think it's  
14      appropriate and permissible by the Court.

15             THE COURT: If I take that approach, within what  
16      period of time is Mr. Fielding able to report once he's  
17      designated?

18             MR. DEMIK: Well, Your Honor, my understanding --  
19      the Court probably knows better -- but from my 12-plus  
20      years of experience in the federal system, normally a safe  
21      bet is five weeks for BOP to get their designation done.  
22      In an abundance of caution, I would ask for at least  
23      six weeks. That would give us a week cushion there. Of  
24      course, if he doesn't self-surrender, Your Honor, he will  
25      stay at Pennington County, he will be taken down to

1 Oklahoma, and he will be kept while they do all their  
2 designation paperwork. If he's allowed to directly  
3 surrender to the facility, my understanding is it takes  
4 about five for the designation to be made, so I am  
5 requesting six weeks.

6 THE COURT: If the designation is made and he's  
7 notified, within what period of time is he able to report?  
8 24 hours?

9 MR. DEMIK: Assuming it's within 80 miles of his  
10 legal address, which is in Pennsylvania, absolutely within  
11 24 hours, Your Honor.

12 THE COURT: 48 would get him to California. I  
13 will consider it.

14 MR. DEMIK: So, Your Honor, having filed the  
15 sentencing memorandum and put forth the exhibits, I don't  
16 have anything further to say unless the Court has any  
17 questions. His family is here. I know they would like to  
18 speak to the Court, if the Court is amenable.

19 THE COURT: Of course. Family support is  
20 critically important when a person comes out of custody.  
21 Reentering the community is a much more effective process  
22 when family-supported. I read the letters which I  
23 consider.

24 If you wish to speak, if you'd go to the podium  
25 and introduce yourself so Judy can have your name in our

1 record, I would be pleased to hear from you.

2 You take all the time you need. This is a tough  
3 place to be talking. You just hang in here. Use that  
4 microphone so we will be able to hear you.

5 MS. FIELDING: I am Catherine Fielding; I'm Tim's  
6 wife. I want you to know that he's such a caring man. He  
7 takes care of me. I have to live in Florida and I came all  
8 the way from Florida out here today to address you because  
9 without him, I don't know what we are going to do. I get  
10 social security disability; it's only \$700 a month. And  
11 without him -- he just helps me so much. I can't walk. I  
12 am never going to walk again. I was in a very bad accident  
13 four years ago and lost my leg. I nearly lost my life.  
14 And he has been there the whole time. And he helps me with  
15 my daughter. She was in a very abusive relationship. She  
16 came to Florida with two kids so it's not just me that  
17 needs help, it's my daughter and the two kids, too. So  
18 there's like four of us down there. I don't know what we  
19 are going to do without him. I mean, before this happened  
20 he would come to Florida all the time and check on us. And  
21 since this happened, he's on a monitor. He calls every  
22 day. Whatever you need; just do whatever you need.

23 THE COURT: Criminal behavior, including this  
24 type of criminal behavior, usually hits the family, the  
25 loved ones the hardest. I have no doubt that Mr. Fielding

1 will be able to handle a custody sentence. The problem is  
2 whether the rest of you will, about which I can do nothing.  
3 But I hear you. I respect your being here to help me  
4 understand because it has an effect on the length of  
5 sentence. You know, in this plea agreement he can get up  
6 to eight years. Understanding his life circumstance is  
7 very helpful.

8 MS. FIELDING: He takes care of his mom, too,  
9 because she had a stroke. There's so many things. And she  
10 couldn't be here because she can't walk. But she is not in  
11 good health at all. He's the only one around to take care  
12 of his mom. So there's so many things.

13 THE COURT: There's tragedy everywhere you look  
14 for the family in this case.

15 MS. FIELDING: Pretty much.

16 THE COURT: You are very courageous to come here  
17 and speak, but you let him know how important he is in  
18 life.

19 MS. FIELDING: Oh, he is.

20 THE COURT: In a very public way, too, and I  
21 respect that. Is there anything else you want me to think  
22 about?

23 MS. SILVIS: My name is Carol Silvis. I am  
24 Tim's girlfriend. I have been dating him for about a year  
25 and a half. I just want you to know he's a very good man.

1 I have never known a man that worked like he does. He  
2 works like a dog. If you let him come home and do this,  
3 turn himself in, he's going to go home and go back to work  
4 until he has to surrender because that's what he does. He  
5 gets up in the morning and goes to work. He hasn't had no  
6 violations, he has no criminal record, he just -- sometimes  
7 he's stupid with things, you know, but he is a very good  
8 man. I don't know what else to say. Thank you.

9 THE COURT: I have no doubt of it. We will get  
10 him home. The question is when. We will figure that out.  
11 Thank you for speaking.

12 MS. SIMONS: My name is Krysta Simons. I am  
13 Tim's daughter. I appreciate you taking the time to read  
14 all our letters and allowing us to come here and speak to  
15 you. I know that you are -- it's not very flexible in what  
16 you can do as everybody sits here and tells you how much we  
17 need him. He's taught me a lot in life. Be hard-working,  
18 be honest. And this mistake is about my dad,  
19 unfortunately; that's how you guys know him. I know  
20 there's not much you can do, but in my eyes -- I mean this  
21 respectfully -- there are things about this that aren't  
22 fair. For a job, I work for children and youth. I do CPS  
23 investigations. I see people not serve jail time that  
24 actually have the intent and do things to children. I know  
25 there's not much you can do with the two years, but really

1 consider the minimum in regards to the mistake of my dad.  
2 And I hope that came across in everything you read and what  
3 you have reviewed. Thanks.

4 THE COURT: Thank you, Ms. Simons. There aren't  
5 many people who walk out of this courtroom if they have  
6 sexual contact with children that don't walk out without  
7 going to prison. I guess you had different experiences.

8 Good afternoon, sir.

9 MR. KELLOGG: Good afternoon. My name is James  
10 Kellogg. I was with Timothy when he was arrested, and my  
11 wife. We were having a couple days at Sturgis. I have  
12 know Tim for 25 years. He works in my basement; he's  
13 worked for me for the last 10 years. And I do believe it's  
14 been all just a big mixup. And he does anything for me; I  
15 do anything for him. I live in New York; he lives in  
16 Pennsylvania. And he works from 6:00 to 8:00 because he  
17 can't stay out overnight. But he does whatever I ask him;  
18 he works seven days a week. He does everything that I ask  
19 him and more. I don't know what else to say. But he has  
20 been a true friend and I really -- like I said, I was there  
21 and I just feel that a lot of things were really thrown out  
22 of proportion and it was a very, very big -- I don't want  
23 to say mixup -- but it just got carried away. I don't know  
24 how else to say it. But I guess I was sleeping in the  
25 truck next to him, me and my wife. And it just -- I don't



1 know what else to say, but Timothy is a very good man, good  
2 father, and I couldn't ask for a better friend.

3 THE COURT: Does he have employment with you when  
4 he's out of custody?

5 MR. KELLOGG: Pardon?

6 THE COURT: Does he have employment with you when  
7 he's out of custody?

8 MR. KELLOGG: Yes. He has worked for me for the  
9 last -- I have known him; we drove truck together; he had  
10 his own truck and then I started a small company and he  
11 came to work for me. Like I said, he can only work from  
12 6:00 in the morning to 8 o'clock. If he can't get  
13 something done in that time, he will work Saturday and  
14 Sundays to get it done. I drove him up here, him and Carol  
15 and their dog, in my new pickup. I have to go to Montana  
16 after this. I left my son and a new employee in the  
17 office. I have 15 employees. I hope I have an office when  
18 I get back. But I took the time out because I believe in  
19 Tim.

20 THE COURT: Well, here is the thing. It's very  
21 helpful to hear from you. You are outside the family. You  
22 are a stable employer. And that's critically important for  
23 someone coming out of custody.

24 MR. KELLOGG: I couldn't ask for a better  
25 employee. He watches my employees; if he sees somebody

1       doing something wrong, he will tell me. He's my eyes and  
2       ears.

3               THE COURT: Your taking the trouble and the time  
4       and investment to be here makes a difference.

5               MR. KELLOGG: I try because I believe that -- I  
6       was there, you know. We were woken up, you know. And I,  
7       just like I said, I believe it was just a big mistake,  
8       that's all. I don't mean to say disrespectfully, but it  
9       just happened, but whatever. I don't know how to say it.

10              THE COURT: I understand.

11              MR. KELLOGG: Can I have my \$186 back? That was  
12       my money.

13              THE COURT: Ask Ms. Collins about that.

14              MR. KELLOGG: Thank you.

15              THE COURT: Watch that dog in your new truck.

16              Good afternoon.

17              MS. KAREY FIELDING: I am Karey Fielding . My  
18       dad is my best friend. Him and I fight, you know, typical.  
19       But if it wasn't for him, I don't know where me and my kids  
20       would be. I drive up to see him all the time in  
21       Pennsylvania to stay with him, you know. Haul my work  
22       stuff up. Now I don't know what I am going to do. My kids  
23       love him. I hope you consider everything here today. We  
24       are going to fall apart trying to figure out what to do  
25       with missing that big component in our lives. I don't

1 condone the whole situation. It breaks my heart to think  
2 about like why we are here today. We are all here. It  
3 kills him, too. If he could turn back time, he would. I  
4 hope you have it deep down in your heart take all this.  
5 Thank you.

6 THE COURT: Well, I appreciate your coming in.  
7 Looks to me like you have great strength in your family to  
8 get through this.

9 Mr. Fielding, do you wish to speak today?

10 THE DEFENDANT: Yeah. I don't know if I can  
11 follow any of that.

12 THE COURT: I don't know how you can follow it  
13 either, but instead of trying to compete with it, this is  
14 your sentencing and no one else's. You have every right to  
15 be heard. I will be pleased to hear from you.

16 You can sit there and tell me what is on your  
17 mind; what I should think about.

18 THE DEFENDANT: Well, as hard as it is to believe  
19 for what I did, I consider myself a pretty intelligent  
20 person. I do. Well, I did, believe me, I learned my  
21 lesson. I kind of entertained myself by a little, you  
22 know, a little, take it out on people, that kind of stuff,  
23 and I went a little too big on this one. Wasn't very  
24 intelligent. Showed I might not be as intelligent as I  
25 think I was. I really screwed up my life and destroyed

1 everything, but I learned my lesson. I don't -- I am  
2 pretty nice to people now. I don't harass them anymore. I  
3 don't have a lot to say.

4 THE COURT: I believe you have learned your  
5 lesson, but there are consequences. The problem here, I am  
6 sure it's going being explained to you, we have real  
7 predators.

8 THE DEFENDANT: Yes, I know.

9 THE COURT: The Sturgis Sting Operation is  
10 serious business. We have real predators who come in in  
11 response to these advertisements or business cards and they  
12 are looking for real children; very young children; 12, 13,  
13 14; under the age of 16. They show up to meet the pimp and  
14 they have got the money, the condoms. One of them showed  
15 up with a strawberry shake and gummy bears for a 12 year  
16 old. And these guys are going through with it. And so the  
17 fact that you messed with a sting operation when these guys  
18 were -- these law enforcement officers were actually in the  
19 business of trying to identify real child predators. It's  
20 a problem. You get that.

21 THE DEFENDANT: Yes, I get that, yeah.

22 THE COURT: Well, the guys sitting in your chair  
23 who have gotten extremely long prison sentences because  
24 they did follow through and they were not kidding around.  
25 It was the real deal. Actually, you are the first person

1       who has been involved in the Sturgis Sting Operation that  
2       wasn't the real deal in terms of the outcome here. So it  
3       sounds terribly severe, but there are reasons for that.  
4       And I don't know how else to put it to you. That's why I  
5       specified in the plea agreement because the circumstances  
6       are unusual, but they are criminal, and there are  
7       consequences for that.

8               Are there other things you want me to think  
9       about?

10              THE DEFENDANT: I guess I just worry about my  
11       certification on my license and stuff. I would never be  
12       able to work again.

13              THE COURT: Well, you will have to deal with  
14       that.

15              THE DEFENDANT: That's my big concern.

16              THE COURT: It has a lot to do with supporting  
17       your family. Thanks for talking through this. It's much  
18       better to have family in to get to know you better through  
19       their eyes and writing and hearing from them and having a  
20       chance to talk to them about this. It helps with my  
21       obligation in sentencing.

22              Mr. Demik, anything further?

23              MR. DEMIK: Nothing further, Your Honor, unless  
24       the Court has any questions.

25              THE COURT: I don't have.

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1 Ms. Collins.

2 MS. COLLINS: Thank you, Your Honor.

3 As the Court is aware, this plea agreement allows  
4 for me to ask for up to eight years and I am not going to  
5 do that. As I was looking back through my file, I found my  
6 original plea offer in this case where Mr. Colbath had  
7 presented to me what the defense was going to be and swayed  
8 my thinking on Mr. Fielding and I was offering him a five  
9 year. And this Court is well aware of the United States'  
10 view of this case on a spectrum of seriousness and that's  
11 where I had put him mainly because he hadn't selected a  
12 child, which was the only time we have had that where he  
13 didn't fully select one of the ages, which some people in  
14 my office thought he was an aggravator, some thought he was  
15 a mitigator.

16 After considering everything that was presented  
17 to me by Mr. Colbath, I made this offer. And the most  
18 significant thing about this offer, probably the biggest  
19 benefit Mr. Fielding gets, is he's not walking out of here  
20 as a registered sex offender. Every single other one of  
21 these guys we have had caught in these stings, we have ten  
22 more this year, and, frankly, they keep coming from that  
23 sting. We have had three since the rally.

24 And the fact that -- let me take a step back.  
25 When somebody is engaged in these negotiations and then a

1 meeting is set, basically the entire team is pulled off of  
2 everything they are doing and for officer safety reasons,  
3 they focus on the meet. So that means that when  
4 Mr. Fielding did this, every single child sex predator that  
5 was on line at that moment was being completely unwatched.  
6 And as the Court is well aware, this sting in this year  
7 caught some of the worst predators we have seen.  
8 Frighteningly bad. I cringe to think that he was taking up  
9 the time in which we caught Mr. Graven; I cringe to think  
10 about that. Thankfully that wasn't the case, but what he  
11 did was very serious. This was not him messing with the  
12 police officers that are there to take down the motorcycle  
13 speeders, because there's an operation going on doing that  
14 as well. These are child sex predators; there's nothing  
15 funny about them. What he did was incredibly serious. And  
16 he took an entire team of agents that work tirelessly  
17 during that week to try to protect those kids and the other  
18 kids from online predators.

19 Your Honor, I am asking for a term of  
20 three years. The reason why I am asking for something  
21 greater than two is based on the seriousness of what he  
22 did. This Court is so well aware of how important the  
23 sting is and how important it is that those agents are  
24 doing what they do best is catch predators. He put them  
25 away for almost an entire evening with his game and that

1       can't be tolerated.

2               So based on that, I do believe that it does  
3       warrant a greater sentence than this plea agreement. But,  
4       again, I am not asking for anything above that. There are  
5       good things about Mr. Fielding and those things I took into  
6       account when I made this very unusual offer. This Court  
7       said it's the only time that the United States has made an  
8       offer where a person gets to plead to basically the conduct  
9       that he did. So I am asking for three years, Your Honor.  
10      I think it's a just sentence. Thank you.

11             THE COURT: Thank you, Ms. Collins. As I said,  
12      it's a very unusual plea agreement. It's so unusual for me  
13      to accept it as a binding agreement.

14             We talked about the Federal Sentencing  
15      Guidelines. I have to consider them. The top of  
16      guidelines here is 24 months which, under the law and the  
17      approach of the guidelines, that's what anyone in your  
18      situation could expect to receive on the upper end for this  
19      crime. But I also have to look at the federal sentencing  
20      statute. That's 3553(a) 18 United States Code, criminal  
21      code. And it is directed by Congress that every federal  
22      judge at sentencing to fashion a sufficient, but not  
23      greater than necessary sentence, and I have to take into  
24      account all the factors. The purpose of the federal  
25      sentencing, they are set out in that law. The nature of



1 the offense, seriousness of the conduct, and punishment,  
2 your personal history and characteristics, the need to  
3 protect the community from future crimes by you, the need  
4 to send a message to the larger community that this type of  
5 conduct will not be tolerated, and I am sure that's part of  
6 the reason for the false statement charge in this case.  
7 The word is out you don't mess with agents in a sting  
8 operation of this nature in this jurisdiction. It's a  
9 federal felony and the consequences are serious.

10 I have to consider the guidelines and I do.

11 I have to avoid sentencing disparity. That means  
12 not give you such a lenient or severe sentence that it's  
13 unfair to others with similar circumstances. There aren't  
14 any similar circumstances I have ever seen to the  
15 particular facts here.

16 But I also have to consider your need for  
17 rehabilitation and treatment. That is, coming out of  
18 custody what's the purpose and factors for supervised  
19 release after custody. So I do consider all these things.

20 This is an unusual case. We have all spent a  
21 great deal of time on it because it's producing an outcome  
22 so different than any of the other state cases involving  
23 predators looking for children.

24 Now, the letters from your family, their  
25 testimony today, your employer and friends, your letter,

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1 Ms. Collins' comments, Mr. Demik, I consider all those  
2 things. I cannot find a need for rehabilitation and  
3 treatment. You don't have a drug or alcohol problem; you  
4 don't have mental health problems. The mental health  
5 professionals say that you are not a pedophile and that you  
6 are at low risk for any type of reoffense in terms of sex  
7 offense involving children. So that's also extremely  
8 unusual here. Most people who come in with a federal  
9 felony have a whole range of issues in life, going  
10 frequently far back to their childhood. You don't have any  
11 of that.

12 So in terms of supervised release, I don't really  
13 think that's it. I am not willing to spend the resources  
14 to supervise you after custody because I think there's no  
15 reason to do so. So rehabilitative resources that would be  
16 available on supervision or the need to monitor you in the  
17 community, weighing the 3553(a) factors, they all have  
18 different weights in different cases.

19 Here you have successfully been on supervision  
20 for an extended period of time with no problem. So you  
21 have been under supervision and we know you are not a  
22 person who is violating the law and you haven't been  
23 caught. You are an understanding, hard-working person who  
24 committed, as it turns out, a serious offense. So I am not  
25 concerned about supervised release in the case.

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1 I am concerned about custody, which is why I  
2 accepted the plea agreement. This criminal behavior does  
3 fully justify a custody sentence. Its punishment and  
4 nothing else; that's all it is. But it has to be  
5 proportionate to the nature of the behavior. I have no  
6 doubt about throwing these agents off because they all do  
7 descend on the setup, the pimp, the undercover agents, and  
8 the person seeking sex with children. That becomes a whole  
9 law enforcement scene where evidence is gathered, arrests  
10 are made. There are unfortunate consequences for holding  
11 that scene over to you when you were not, as you say,  
12 interested in seeking out a child for criminal purposes.  
13 So it's a tough case for sentencing disparity because there  
14 isn't much to compare with.

15 There is a federal sentencing guideline which is  
16 the usual guardian of avoidance of disparity cases.

17 I think that a person can make a good argument  
18 for a range of months of imprisonment above the two-year  
19 floor of this binding plea agreement if circumstances or  
20 otherwise in his life, the support system wasn't there, you  
21 had real struggles where we thought there was going to be  
22 repeat criminal offenses, the two-year low end of the  
23 guidelines -- of the plea agreement would not nearly be of  
24 consequence here. I do believe, however, that the high end  
25 of guideline range for 24 months, which is the bottom of

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1 the binding plea agreement, is a fair and just sentence  
2 under these circumstances and I will impose that. So  
3 that's my view of it. No disrespect to your position. I  
4 accept the seriousness of pulling a team under these  
5 circumstances out of what is a complicated task which is  
6 sad to know it's been very successful again this year.

7 So if you would please stand, Mr. Fielding, I am  
8 going to announce the sentence and then ask the attorneys  
9 if there's any legal reason why it should not be imposed.

10 Based on the constitutional and statutory  
11 authority vested in this Court, it's the judgment of the  
12 Court that Timothy Fielding is hereby committed to the  
13 custody of the United States Bureau of Prisons to be  
14 incarcerated for a term of 24 months; that's two years.

15 Mandatory drug testing is suspended in this case  
16 because you are a low risk of future use of controlled  
17 substances.

18 As with every federal felony, I must require that  
19 you cooperate in the collection of DNA.

20 Now, there's no purpose for a fine. You don't  
21 have the ability to pay a fine in the case. I must order  
22 that you pay \$100 into a Victim's Assistance Fund. That's  
23 due immediately or it becomes part of your criminal  
24 judgment in the case.

25 What's the situation with the \$182, Ms. Collins?

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1 MS. COLLINS: Your Honor, as far as I knew that  
2 was Mr. Fielding's money, so we have an order for  
3 forfeiture. He agreed to forfeit it.

4 THE COURT: He did.

5 MS. COLLINS: So based on the statement we have  
6 on the record here today, I am asking him to forfeit it.  
7 That was my understanding it was going to be used when he  
8 was arrested for the child.

9 THE COURT: Typically, the presence of currency  
10 in the face of this kind of sting operation is for criminal  
11 purposes. You have agreed to forfeit it. It's \$182 and I  
12 do order that you forfeit all interest in that amount.

13 You may be seated, Mr. Fielding.

14 Ms. Collins, is there any legal reason why the  
15 sentence should not be imposed as announced?

16 MS. COLLINS: No, Your Honor.

17 THE COURT: Mr. Demik?

18 MR. DEMIK: No, Your Honor.

19 THE COURT: Any need for clarification, Mr.  
20 Akers?

21 PROBATION OFFICER AKERS: No, Your Honor.

22 THE COURT: I do impose the sentence as I have  
23 announced it, Mr. Fielding.

24 I am going to permit you to self-surrender to the  
25 United States Bureau of Prisons within 48 hours of the

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1 designation of that federal correctional institution. You  
2 can work with Mr. Demik and get your questions answered  
3 through him or directly with the Marshal Service on how  
4 that shall happen. But I will permit self-surrender in  
5 this case. It will assist probably with your security  
6 classification and may have other benefits to you. You  
7 have not shown any reason to believe that you will not  
8 self-surrender. Will you do that, sir?

9 THE DEFENDANT: Yes, I will self-surrender.

10 THE COURT: Do so within 48 hours of designation  
11 by the Bureau of Prisons.

12 Now, you do have 14 days from today's date within  
13 which to challenge this sentence in the United States Court  
14 of Appeals. We talked about the waiver of your appeal  
15 rights as part of your entry of a plea of guilty today, so  
16 your appeal rights are extremely limited under the terms of  
17 the plea agreement. But if you wish to challenge this  
18 sentence, you please tell Mr. Demik and he will file a  
19 notice of appeal to protect your rights. I must make  
20 certain on the record you understand you have only 14 days  
21 to appeal. Do you understand that?

22 THE DEFENDANT: I understand.

23 THE COURT: Now, Ms. Collins, is there a motion  
24 to dismiss the indictment in the case?

25 MS. COLLINS: Yes, Your Honor.

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1           THE COURT: That was part of the plea arrangement  
2 here and I grant the government's motion to dismiss the  
3 indictment. You are free of those charges now.

4           Is there anything further, Ms. Collins?

5           MS. COLLINS: No, Your Honor.

6           THE COURT: Mr. Demik?

7           MR. DEMIK: No, Your Honor.

8           THE COURT: Well, I really appreciate all the  
9 traveling from Florida and Pennsylvania. It makes a  
10 difference in fashioning a sentence to hear from you and  
11 also to read the letters you submitted and hear from you,  
12 Mr. Fielding. I appreciate that.

13           I wish you success. I have no doubt when you are  
14 out of custody, that your life will go back to what you  
15 said in your letter. You just want to get back to your  
16 normal life. I wish you success in that, sir.

17           Court is adjourned.

18           (Court adjourned at 4:10 p.m.)  
19  
20  
21  
22  
23  
24  
25

## 1 COURT REPORTER'S CERTIFICATE

2 STATE OF SOUTH DAKOTA )  
3 COUNTY OF PENNINGTON ) SS

4 I, Judith M. Thompson, R.P.R., Official Court Reporter in  
5 and for the United States District Court, District of South  
6 Dakota,

7 DO HEREBY CERTIFY that I acted as such Court Reporter at  
8 the Hearing of the within-entitled action, and that the  
9 foregoing transcript, pages 1 to 55, inclusive, is a true and  
10 complete transcript of my shorthand notes taken at said  
11 Hearing.

12 Dated at Rapid City, South Dakota, this 28th day of  
13 September, 2016.

14

15

16 /s/

17 Judith M. Thompson, R.P.R.  
18 Official Court Reporter

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